

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

WILLIAM ANGELO LATTEN, JR.,

Plaintiff,

v.

J. BENAVIDEZ, et al.,

Defendants.

No. 2:23-cv-1879 DB P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff, a state prisoner proceeding pro se, filed this civil rights action under 42 U.S.C. §1983. On screening plaintiff's complaint, this court found plaintiff stated potentially cognizable Eighth Amendment claims against defendants Salinas-Gonzalez, Ortiz-Garcia, and Warstler. (ECF No. 10.) This court further found that plaintiff stated no claims against defendant Benavidez. Plaintiff was given the option of proceeding immediately on the potentially cognizable claims or filing an amended complaint. Plaintiff chose to file an amended complaint. (ECF No. 13.)

On screening the amended complaint, this court found plaintiff again failed to state a claim against Benavidez. In addition, this court noted that plaintiff omitted his claims against the remaining defendants from the amended complaint. Plaintiff was given the opportunity to file a second amended complaint to restate his claims against Salinas-Gonzalez, Ortiz-Garcia, and

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1 Warstler and to attempt to state a claim against Benavidez. (ECF No. 16.) Plaintiff has filed a
2 second amended complaint. (ECF No. 17.)

3 In his second amended complaint, plaintiff simply states that Benavidez, a supervising
4 officer, violated his First and Sixth Amendment rights. Plaintiff alleges no facts to support that
5 statement. Plaintiff has had three opportunities to state a claim against Benavidez and has failed
6 to do so. This court finds that providing plaintiff any further opportunities to state a claim against
7 Benavidez would be futile. This court will recommend defendant Benavidez be dismissed from
8 this action.

9 As he did in his original complaint, plaintiff has stated potentially cognizable Eighth
10 Amendment excessive force claims against defendants Salinas-Gonzalez and Ortiz-Garcia and a
11 potentially cognizable Eighth Amendment failure to protect claim against defendant Warstler.¹
12 By separate order, this court will order service of the second amended complaint on those three
13 defendants.

14 For the foregoing reasons, the Clerk of the Court is HEREBY ORDERED to randomly
15 assign a district judge to this case; and

16 IT IS RECOMMENDED that defendant Benavidez be dismissed from this action without
17 prejudice.

18 These findings and recommendations will be submitted to the United States District Judge
19 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days
20 after being served with these findings and recommendations, plaintiff may file written objections
21 with the court. The document should be captioned "Objections to Magistrate Judge's Findings
22 and Recommendations." Plaintiff is advised that failure to file objections within the specified

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27 ¹ In his second amended complaint, plaintiff does not identify the date of the events complained
28 of. In his original complaint, plaintiff alleged the events occurred on January 20, 2023. (See ECF
No. 1 at 3.)

time may result in waiver of the right to appeal the district court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: July 3, 2024


DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

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